

Minutes of the Meeting
Juvenile Task Force
November 9, 2007

On Friday, November 9, 2007 the Juvenile Task Force met in the Superior Court for Juvenile Matters at Hartford, 920 Broad Street, 4th floor, Courtroom C, Hartford from 9:00 a.m. to approximately 11:30 a.m.

Members in attendance were:

Hon. Christine E. Keller, Chair
Hon. Marcia J. Gleeson
Hon. John C. Driscoll
Francis Carino, Esq.
Cynthia L. Cunningham, Esq.
Maria M. Holzberg, Esq.

Nancy A. Porter, Esq.
Susan Pearlman, Esq.
Bruce Tonkonow, Esq.
Ben Zivyon, Esq.

Attorney Lori Hellum, Julia O'Leary, Attorney Christine P. Rapillo, Attorney Robert Shaver, and Attorney Carolyn Signorelli were not in attendance at this meeting.

1. The Task Force reviewed and approved the November 2nd draft of Chapter 26 with minor revisions to subparagraphs (n) and (p) as set forth in Appendix A attached hereto.

2. The Task Force approved the November 2nd draft of Chapter 27.

3. The Task Force reviewed and approved the November 2nd draft of Chapter 30 with a minor typographical revision to Section 30-2A as set forth in Appendix B attached hereto. The Task Force discussed Attorney Tonkonow's proposal to remove the phrase "including the date of admission" in Practice Book Section 30-10 (b). Judge Keller stated that Judge Goldstein added the phrase during the 2002 Juvenile Practice Book Task Force revisions to clarify the time frame. Attorney Holzberg stated that removal of the phrase would adversely affect a child's liberty interest. Judge Keller asked the members to vote on the proposal. The vote was: 7 against, 2 in favor, 1 abstention; therefore, no change was necessary.

4. The Task Force reviewed and amended Chapter 30a as follows:

- Section 30a-1 (e). The Task Force discussed the Public Defender’s proposal to notify the public defender. The Task Force determined that, pursuant to Public Act 07-159(7), no change was necessary.
- Section 30a-1 (g). Attorney Holzberg will advise the Task Force concerning the appropriate reference to the public defender’s office.
- Section 30a-3 (b). The Task Force removed the phrase “or the petitioner’s counsel, as the case may be.” Public Act 07-4 precludes any party other than the juvenile prosecutor from proceeding with the petition.
- Section 30a-4 (3). The Task Force discussed the concept of a “penalty” and whether to change the phrase to “penalty or disposition.” The Task Force decided that no change was necessary.
- Section 30a-4 (5) (ii). The Task Force amended the subparagraph to read as follows: “the right to be tried by a judicial authority and to have the prosecutor prove the case by the requisite burden of proof.”
- Section 30a-6. Judge Keller asked the Task Force to consider Judge Kari A. Dooley’s proposal to remove the last sentence of this section. It is Judge Dooley’s opinion that it conflicts with C.G.S. 46b-138b. The Task Force discussed the proposal and noted that differences between juvenile matters court and adult criminal court support this practice. For example, in many districts there is only one judge in juvenile court. If a victim makes a statement before conviction and talks about the facts of his or her case, the judge would automatically be disqualified. Members of the Task Force stated that it does not violate the statute if the victim makes a statement to the court at the time of or immediately prior to the disposition. Judge Keller asked the Task Force to vote on the proposal. The vote was: 10 against, 0 in favor of Judge Dooley’s proposal; therefore, no change was necessary.

The revisions to various sections of Chapter 30a are set forth in Appendix C attached hereto.

5. The Task Force reviewed and amended Chapter 31a as set forth in Appendix D attached hereto. Among other changes, Judge Keller asked the Task Force to discuss a proposal made by Judge Mottolese concerning Section 31a-13(2)(b). The Task force voted 8 against and 2 in favor of the proposal; therefore, no change was necessary.
6. The next Task Force Meeting is scheduled for November 15, 2007 at 9:00.

Attachments

APPENDIX A

NOVEMBER 9th DRAFT

SUPERIOR COURT—PROCEDURE IN JUVENILE MATTERS CHAPTER 26 DEFINITIONS

Sec.

26-1. Definitions Applicable to Proceedings on Juvenile Matters

Sec. 26-1. Definitions Applicable to Proceedings on Juvenile Matters

In these definitions and in the rules of practice and procedure on juvenile matters, the singular shall include the plural and the plural, the singular where appropriate. (a)(1) "Child" means any person under sixteen years of age and, for purposes of delinquency matters and family with service needs matters, "child" means any person (A) under sixteen years of age whose delinquent act or family with service needs conduct occurred prior to the person's sixteenth birthday or, (B) sixteen years of age or older who, prior to attaining sixteen years of age, has violated any federal or state law or municipal or local ordinance, other than an ordinance regulating behavior of a child in a family with service needs, and, subsequent to attaining sixteen years of age, violates any order of a judicial authority or any condition of probation ordered by a judicial authority with respect to such delinquency proceeding; (2) "Youth" means any person sixteen or seventeen years of age; (3) "Youth in crisis" means any youth who, within the last two years, (A) has without just cause run away from the parental home or other properly authorized and lawful place of abode; (B) is beyond the control of the youth's parents, guardian or other custodian; or (C) has four unexcused absences from school in any one month or ten unexcused absences in any school year; (4)

The definitions of the terms “abused,” “mentally deficient,” “delinquent,” “delinquent act,” “dependent,” “neglected,” “uncared for,” “alcohol-dependent child,” “family with service needs,” “drug-dependent child,” “serious juvenile offense,” “serious juvenile offender,” and “serious juvenile repeat offender” shall be as set forth in General Statutes § 46b-120. (5) “Indian child” means an unmarried person under age eighteen who is either a member of a federally recognized Indian tribe or is eligible for membership in a federally recognized Indian tribe and is the biological child or youth of a member of a federally recognized Indian tribe, and is involved in custody proceedings, excluding delinquency proceedings.

COMMENTARY: Added language to reflect new definition of “youth in crisis” pursuant to C.G.S. § 46b-120(3)(B) as amended by P.A. 05-250, Sec. 1.

(b) “Commitment” means an order of the judicial authority whereby custody and/or guardianship of a child or youth are transferred to the commissioner of the department of children and families.

(c) “Complaint” means a written allegation or statement presented to the judicial authority that a child’s or youth’s conduct as a delinquent or situation as a child from a family with service needs or youth in crisis brings the child or youth within the jurisdiction of the judicial authority as prescribed by General Statutes § 46b-121.

(d) “Detention” means a secure building or staff secure facility for the temporary care of a child who is the subject of a delinquent complaint.

(e) “Guardian” means a person who has a judicially created relationship with a child or youth which is intended to be permanent and self sustaining as evidenced

by the transfer to the caretaker of the following parental rights with respect to the child or youth: protection, education, care and control of the person, custody of the person and decision making.

(f) "Hearing" means an activity of the court on the record in the presence of a judicial authority and shall include (1) "Adjudicatory hearing": A court hearing to determine the validity of the facts alleged in a petition or information to establish thereby the judicial authority's jurisdiction to decide the matter which is the subject of the petition or information; (2) "Contested hearing on an order of temporary custody" means a hearing on an ex parte order of temporary custody or an order to ~~[show cause]~~ appear which is held ~~[within]~~ not later than ten days from the day of a preliminary hearing on such orders. Contested hearings shall be held on consecutive days except for compelling circumstances or at the request of the ~~[parent or guardian]~~ respondent; (3) "Dispositive hearing": The judicial authority's jurisdiction to adjudicate the matter which is the subject of the petition or information having been established, a court hearing in which the judicial authority, after considering the social study or predispositional study and the total circumstances of the child or youth, orders whatever action is in the best interests of the child, youth or family and, where applicable, the community. In the discretion of the judicial authority, evidence concerning adjudication and disposition may be presented in a single hearing. (4) "Preliminary hearing" means a hearing on an ex parte order of temporary custody or an order to appear or the first hearing on a petition alleging that a child or youth is uncared for, neglected, or dependent. A preliminary hearing on any ex parte custody order or order to appear shall be held ~~[within]~~ not later than ten days from the issuance of the order. (5) "Plea hearing" is a hearing at which (i)

A parent or guardian who is a named respondent in a neglect, uncared for or dependency petition, upon being advised of his or her rights admits, denies, or pleads nolo contendere to allegations contained in the petition; or (ii) a child or youth who is a named respondent in a delinquency petition or information enters a plea of not guilty, guilty, or nolo contendere upon being advised of the charges against him or her contained in the information or petition, or a hearing at which a child or youth who is a named respondent in a family with service needs or youth in crisis petition admits or denies the allegations contained in the petition upon being advised of the allegations.

(g) "Parent" means a biological mother or father or adoptive mother or father except a biological or adoptive mother or father whose parental rights have been terminated; or the father of any child or youth born out of wedlock, provided at the time of the filing of the petition (A) he has been adjudicated the father of such child or youth by a court which possessed the authority to make such adjudication, or (B) he has acknowledged in writing to be the father of such child or youth, or (C) he has contributed regularly to the support of such child, or (D) his name appears on the birth certificate, or (E) he has filed a claim for paternity as provided under General Statutes § 46b-172a, or (F) he has been named in the petition as the father of the minor child or youth by the mother.

(h) "Parties" includes: (1) The child or youth who is the subject of a proceeding and those additional persons as defined herein; (2) "Legal party": Any person, including a parent, whose legal relationship to the matter pending before the judicial authority is of such a nature and kind as to mandate the receipt of proper legal notice as a condition precedent to the establishment of the judicial authority's

jurisdiction to adjudicate the matter pending before it; and (3) "Intervening party": Any person whose interest in the matter before the judicial authority is not of such a nature and kind as to entitle legal service or notice as a prerequisite to the judicial authority's jurisdiction to adjudicate the matter pending before it but whose participation therein, at the discretion of the judicial authority, may promote the interests of justice. An "intervening party" may in any proceeding before the judicial authority be given notice thereof in any manner reasonably appropriate to that end, but no such "intervening party" shall be entitled, as a matter of right, to provision of counsel by the court.

(i) "Permanency plan" means a plan developed by the commissioner of the department of children and families for the permanent placement of a child or youth in the commissioner's care. Permanency plans shall be reviewed by the judicial authority as prescribed in General Statutes §§ 17a-110 (b), 17a-111b [(b)] (c), 46b-129 (k) and 46b-141.

(j) "Petition" means a formal pleading, executed under oath, alleging that the respondent is within the judicial authority's jurisdiction to adjudicate the matter which is the subject of the petition by reason of cited statutory provisions and seeking a disposition. Except for a petition for erasure of record, such petitions invoke a judicial hearing and shall be [executed] filed by any one of the parties authorized to do so by statute[, provided a delinquency petition may be executed by either a probation officer or juvenile prosecutor].

(k) "Information" means a formal pleading [executed] filed by a prosecutor alleging that a child or youth in a delinquency matter is within the judicial authority's jurisdiction.

(l) "Probation" means a legal status created in delinquency cases following conviction whereby a respondent child is permitted to remain in the home or in the physical custody of a relative or other fit person subject to supervision by the court through the court's probation officers and upon such terms as the judicial authority determines, subject to the continuing jurisdiction of the judicial authority.

(m) "Respondent" means a ~~[child]~~ person who is alleged to be a delinquent or a child from a family with service needs, or a youth in crisis, or a parent or a guardian of a child or youth who is the subject of a petition alleging that the child is uncared for, neglected, or dependent or requesting termination of parental rights.

COMMENTARY: It is recommended that the more general term "person" be used to encompass all terms that are later listed: child, youth, parent.

(n) "Specific steps" means those judicially determined steps the respondent parent or parents, or guardian and the commissioner of the department of children and families should take in order for the ~~[parent or guardian]~~ respondent to retain or regain custody of a child or youth.

COMMENTARY: Amended to reflect C.G.S. § 46b-149 language and standardize references from parent or guardian to respondent parent or parents, or guardian.

(o) "Supervision" includes: (1) "Nonjudicial supervision": A legal status without the filing of a petition or a court conviction or adjudication but following the ~~[child or youth's]~~ child's admission to a complaint wherein a probation officer exercises supervision over the child [or youth] with the consent of the child [or youth] and the parent; (2) "Protective supervision": A disposition following

adjudication in neglected, uncared for or dependent cases created by an order of the judicial authority requesting a supervising agency other than the court to assume the responsibility of furthering the welfare of the family and best interests of the child or youth when the child's or youth's place of abode remains with the parent or any suitable or worthy person, subject to the continuing jurisdiction of the court; and (3) "Judicial supervision": A legal status [equivalent] similar to probation for a child adjudicated to be from a family with service needs or subject to supervision pursuant to an order of suspended proceedings under General Statutes § 46b-133b or §46b-133e.

COMMENTARY: The statute does not provide for nonjudicial handling of Youth in Crisis.

(p) "Take into Custody Order" means an order by a judicial authority that a child be taken into custody and immediately turned over to a detention supervisor where probable cause has been found that the child has committed a delinquent act and the child meets the criteria set forth in practice book section 31a-13.

COMMENTARY: Language added to include legal standard.

(q) "Victim" means the person who is the victim of a delinquent act, a parent or guardian of such person, the legal representative of such person or an advocate appointed for such person pursuant to General Statutes § 54-221.

COMMENTARY: Added to reflect new definition of "victim" from § 46b-122.

(r) "Family support center" means a community-based service center for children and families involved with a complaint that has been filed with the Superior Court under General Statutes § 46b-149, that provides multiple services, or access

to such services, for the purpose of preventing such children and families from having further involvement with the court as families with service needs.

COMMENTARY: Added to reflect new definition of “family support center” pursuant to Special PA 07-4, Section 31(a).

(s) “Staff secure facility” means a residential facility (1) that does not include construction features designed to physically restrict the movements and activities of juvenile residents who are placed therein, (2) that may establish reasonable rules restricting entrance to and egress from the facility, and (3) in which the movements and activities of individual juvenile residents may, for treatment purposes, be restricted or subject to control through the use of intensive staff supervision.

COMMENTARY: Added to reflect new definition of “staff secure facility” pursuant to Special PA 07-4, section 32(c).

APPENDIX B

NOVEMBER 9th DRAFT

CHAPTER 30 DETENTION

Sec.

30-1. Notice and Statement by Person Bringing Child to Detention [Repealed]

30-1A. Admission to Detention

30-2. Release [Repealed]

NEW Sec. 30-2A. Family With Service Needs and Detention

30-3. Advisement of Rights

30-4. Notice to Parents by Detention Personnel

30-5. Detention Time Limitations

30-6. Basis for Detention

30-7. Place of Detention Hearings

30-8. Initial Order for Detention; Waiver of Hearing

30-9. Information Allowed at Detention Hearing

30-10. Orders of a Judicial Authority after Initial Detention Hearing

30-11. Detention after Dispositional Hearing

Sec. 30-1. Notice and Statement by Person Bringing Child to Detention

[Repealed as of Jan. 1, 2003.]

Sec. 30-1A. Admission to Detention

Whenever an officer or other person intends to admit a child into detention, the provisions of General Statutes § 46b-133 shall apply.

NEW Sec. 30-2A. Family With Service Needs and Detention

(a) No child who has been adjudicated as a child from a family with service needs in accordance with C.G.S. § 46b-149 may be processed or held in a juvenile detention center as a delinquent child, or be convicted as a delinquent, solely for the violation of a valid order which regulates future conduct of the child that was issued by the court following such an adjudication, and no such child who is

charged or found to be in violation of any such order may be ordered detained in any juvenile detention center.

(b) No non-delinquent juvenile runaway from another state may be held in a juvenile detention center in accordance with the provisions of General Statutes Sections 46b-151 to 46b-151g inclusive.

COMMENTARY: This proposed new rule includes the amendment to § 46b-148 (a) set forth in P.A. 05-250, Section 2. The wording of the statute is changed slightly because (2) of the statute references commitments to detention centers which is confusing due to the distinctly different commitment of a delinquent to the Department of Children and Families.

Sec. 30-2. Release

[Repealed as of Jan. 1, 2003.]

Sec. 30-3. Advisement of Rights

Upon admission to detention, the child shall be advised of the right to remain silent and the right to counsel and be further advised of the right to a detention hearing in accordance with Sections 30-5 through 30-8, which hearing may be waived only with the written consent of the child and the child's attorney.

Sec. 30-4. Notice to Parents by Detention Personnel

[If, u]Upon admission, [the officer or other person who brings the child to detention has not complied with the duty of notifying the parent or guardian as set forth in Section 30-1A,] the detention [~~supervisor~~] superintendent or a designated

representative shall make efforts to immediately notify the parent or guardian in the manner calculated most speedily to effect such notice and, upon the parent's or guardian's appearance at the detention facility, shall advise the parent or guardian of his or her rights and note the child's rights, including the child's right to a detention hearing.

COMMENTARY: Standardization of terms. The position is now Juvenile Detention Superintendent, as opposed to Supervisor. It seems logical that regardless of whether a police officer has notified a child's parent or guardian, the detention supervisor should also make efforts to notify the child's parent or guardian.

Sec. 30-5. Detention Time Limitations

(a) No child shall be held in detention for more than twenty-four hours, excluding Saturdays, Sundays, and holidays, unless a delinquency petition or information alleging delinquent conduct has been filed and an order for such continued detention has been signed by the judicial authority.

(b) A hearing to determine probable cause and the need for further detention shall be held no later than the next business day following the arrest. However, a judicial finding of probable cause must be made within forty-eight hours of arrest, including Saturdays, Sundays and holidays. If there is no such finding of said probable cause within forty-eight hours of the arrest, the child shall be released from detention subject to an information and subsequent arrest by warrant or take into custody order.

Sec. 30-6. Basis for Detention

No child shall be held in detention unless it appears from the available facts that there is probable cause to believe that the child is responsible for the acts alleged and that there is (1) a strong probability that the child will run away prior to court hearing or disposition, or (2) a strong probability that the child will commit or attempt to commit other offenses injurious to the child or to the community before court disposition, or (3) probable cause to believe that the child's continued residence in the home pending disposition will not safeguard the best interests of the child or the community because of the serious and dangerous nature of the act or acts set forth in the attached delinquency petition or information, or (4) a need to hold the child for another jurisdiction, or (5) a need to hold the child to assure the child's appearance before the court, in view of a previous failure to respond to the court process. The court in exercising its discretion to detain under General Statutes § 46b-133 (d) may consider a suspended detention order with graduated sanctions as an alternative to detention in accordance with graduated sanctions procedures established by the judicial branch.

COMMENTARY: Clarification.

Sec. 30-7. Place of Detention Hearings

The initial detention hearing may be conducted in the superior court for juvenile matters at the detention facility where the child is held and, thereafter, detention hearings shall be held at the superior court for juvenile matters [case] of appropriate venue.

COMMENTARY: Clarification consistent with Gen. Stat. Sec. 17a-76(b).

Sec. 30-8. Initial Order for Detention; Waiver of Hearing

Such initial order of detention may be signed without a hearing only if there is a written waiver of the detention hearing by the child and the child's attorney and there is a finding by the judicial authority that the circumstances outlined in Section 30-6 pertain to the child in question. An order of detention entered without a hearing shall authorize the detention of the child for a period not to exceed ten days, including the date of admission, and may further authorize the detention [~~supervisor~~ superintendent or a designated representative to release the child to the custody of a parent, guardian or some other suitable person, with or without conditions of release, if detention is no longer necessary, except that no child shall be released from detention who is alleged to have committed a serious juvenile offense except by order of a judicial authority of the superior court. Such an ex parte order of detention shall not be renewable without a detention hearing before the judicial authority.

COMMENTARY: Standardization of terms.

Sec. 30-9. Information Allowed at Detention Hearing

At the detention hearing the judicial authority may consider any information which is material and relevant to the issue of detention. Probable cause may be proven by sworn affidavit in lieu of testimony. The probation department may ascertain such factors as might pertain to any need for detention. Any written reports or social records made available to the judicial authority shall be made available to counsel of record and, in the absence of counsel, to the parties unless the judicial authority finds that the availability of such materials would be

psychologically destructive to the relationship between members of the family. Either through direct access or by quotation or summation by the judicial authority, the parties should be made aware of such findings in the reports or social records as directly enter into the judicial authority's decision.

Sec. 30-10. Orders of a Judicial Authority after Initial Detention Hearing

(a) At the conclusion of the initial detention hearing, the judicial authority shall issue an order for detention on finding probable cause to believe that the child has committed a delinquent act and that at least one of the factors outlined in Section 30-6 applies to the child.

(b) If the child is placed in detention, such order for detention shall be for a period not to exceed fifteen days, including the date of admission, or until the dispositional hearing is held, whichever is the shorter period, unless, following a further detention review hearing, the order is renewed. Such detention review hearing may not be waived.

(c) If the child is not placed in detention but released on a suspended order of detention on conditions, such suspended order of detention shall continue to the dispositional hearing or until further order of the judicial authority. Said suspended order of detention may be reviewed by the judicial authority every fifteen days. Upon a finding of probable cause that the child has violated any condition, a judicial authority may issue a take into custody order or order such child to appear in court for a hearing on revocation of the suspended order of detention. Such an order to appear shall be served upon the child in accordance with General Statutes § 46b-128 (b), or, if the child is represented, by serving the order to appear upon the

child's counsel, who shall notify the child of the order and the hearing date. After a hearing and upon a finding that the child has violated reasonable conditions imposed on release, the judicial authority may impose different or additional conditions of release or may remand the child to detention.

(d) In conjunction with any order of release from detention the judicial authority may, in accordance with General Statutes § 46b-133 (f), order the child to participate in a program of periodic drug testing and treatment as a condition of such release. The results of any such drug test shall be admissible only for the purposes of enforcing the conditions of release from detention.

COMMENTARY: C.G.S. § 46b-148, as amended by P.A. 05-250, Section 2, prohibits a child adjudicated as a child from a family with service needs from being remanded to detention for a violation of a valid order after the adjudication.

Sec. 30-11. Detention after Dispositional Hearing

While awaiting implementation of the judicial authority's order in a delinquency case, a child may be held in detention subsequent to the dispositional hearing, provided a hearing to review the circumstances and conditions of such detention order shall be conducted every fifteen days and such hearing may not be waived.

COMMENTARY: C.G.S. § 46b-148, as amended by P.A. 05-250, Section 2, prohibits a child adjudicated as a child from a family with service needs from being remanded to detention for a violation of a valid order after the adjudication.

APPENDIX C

NOVEMBER 9th DRAFT

CHAPTER 30a DELINQUENCY, FAMILY WITH SERVICE NEEDS AND YOUTH IN CRISIS HEARINGS

Sec.

30a-1. Initial Plea Hearing

(NEW) Sec. 30a-1A Family With Service Needs Preadjudication Continuance

30a-2. Pretrial Conference

30a-3. — Standards of Proof; Burden of Going Forward

30a-4. Plea Canvass

30a-5. Dispositional Hearing

30a-6. — Statement on Behalf of Victim

(NEW) Sec. 30a-6A. — Persons in Attendance at Hearings

30a-7. Recording of Hearings

30a-8. Records

Sec. 30a-1. Initial Plea Hearing

(a) The judicial authority shall begin the hearing by determining whether all necessary parties are present and that the rules governing service or notice for nonappearing parties have been complied with, and shall note these facts for the record. The judicial authority shall then inform the parties of the substance of the petition or information.

(b) In age appropriate language, the judicial authority prior to any plea shall advise the child or youth and parent or guardian of the following rights:

(1) That the child or youth is not obligated to say anything and that anything that is said may be used against the child or youth.

(2) That the child or youth [and the parent or guardian] is entitled to the services of an attorney and that if the child or youth or parent or

guardian is unable to [pay,] afford an attorney for the child or youth, an application for a public defender or [court-appointed] an attorney appointed by the Chief Child Protection Attorney should be completed and filed with the office of the public defender or the clerk of the court to request an attorney without cost.

(3) That the child or youth will not be questioned unless he or she consents, that the child or youth can consult with an attorney before being questioned and may have an attorney present during questioning, and that the child or youth can stop answering questions at any time.

(4) That the child or youth has the right to a trial and the rights of confrontation and cross-examination of witnesses.

(c) Notwithstanding any prior statement acknowledging responsibility for the acts alleged, the judicial authority shall inquire of the child or youth whether the child or youth presently admits or denies the allegations of the petition or information.

(d) If the judicial authority determines that a child or youth, or the parent, parents or guardian of a child or youth are unable to afford counsel for the child or youth, the judicial authority shall, in a delinquency proceeding, appoint the office of the public defender to represent the child, or in a family with service needs or youth in crisis proceeding, notify the Chief Child Protection Attorney, who shall assign an attorney to represent the child or youth.

(e) If the judicial authority, even in the absence of a request for appointment of counsel, determines that the interests of justice require the provision of an attorney to represent the child, youth or the child's or youth's parent or parents, guardian or other person having control of the child or youth, in any delinquency, family with service needs or youth in crisis proceeding, the judicial authority may appoint an attorney to represent any such party and shall notify the Chief Child Protection Attorney who shall assign an attorney to represent any such party. Where, under the provisions of this section, the court so appoints counsel for any such party who is found able to pay, in whole or in part, the cost thereof, the judicial authority shall assess as costs on the appropriate form against such parent or parents, guardian or other person having control of the child or youth, including any agency vested with the legal custody of the child or youth, the expense so incurred and paid by the Commission on Child Protection in providing such counsel, to the extent of their financial ability to do so in accordance with the rates established by the Commission on Child Protection for compensation of counsel.

(f) If the parent, parents or guardian of the child or youth fails to comply with a court order entered in the best interest of the child or youth and is facing potential imprisonment for contempt of court, such parent or guardian, if unable to afford counsel, shall be entitled to have counsel

provided for such parent or guardian of the child or youth in accordance with subsection (e) of this section.

(g) For purposes of determining eligibility for appointment of counsel, the judicial authority shall cause the parent or guardian of a child or youth to complete a written statement under oath or affirmation setting forth the child's or youth's, or parent's, parents' or guardian's or other person's liabilities and assets, income and sources thereof, and such other information as the office of the public defender or the Commission on Child Protection shall designate and require on forms adopted by said office of the public defender or Commission on Child Protection.

COMMENTARY: See C.G.S. § 46b-123e, as amended by P.A. 07-159, Secs. 4, 6, & 7. Paragraph (a) expand the language, a party may not need to be served, just notified. Paragraph (b)(2) – CGS 46b-135(a), amended by PA 07-159, sec. 6. Paragraph (c) standardization of terms. Paragraph (d)(1) – PA 07-159, sec. 3 (a)(1)(B) & Sec. 4 (b). Paragraph (d) – see PA 07-159, Sec. 4 (b) & (c). Paragraph (e) – This paragraph addresses the situation where the judicial authority determines that the interests of justice require appointment of counsel pursuant to Gen. Stat. Sec. 46b-136. See also, PA 07-149, Sec. 7 (f) – PA 07-159, sec. 6(a). Paragraph (g) _____.

(NEW) Sec. 30a-1A Family With Service Needs Preadjudication Continuance

If a family with service needs petition is filed and it appears that the interest of the child or the family may be best served, prior to adjudication, by referral to community-based or other services, the judicial authority may permit the matter to be continued for a reasonable period of time not to exceed six months, which time period may be extended by an additional three months for cause. If it appears at the conclusion of the continuance that the matter has been satisfactorily resolved, the judicial authority may dismiss the petition.

COMMENTARY: PA 07-4, section 30(g).

Sec. 30a-2. Pretrial Conference

(a) When counsel is requested, or responsibility is denied, the case may be continued for a pretrial conference. At the pretrial, the parties may agree that a substitute information will be filed, or that certain charges will be nolleed or dismissed. If the child or youth and parent or guardian subsequently execute a written statement of responsibility at the pretrial conference, or the attorney for the child or youth conveys to the prosecutor an agreement on the adjudicatory grounds, a predispositional study shall be compiled by the probation department and the case shall be assigned for a plea and dispositional hearing.

(b) If a plea agreement has been reached by the parties which contemplates the entry of an admission in a family with service needs or

youth in crisis case, or a plea of guilty or nolo contendere in a delinquency case, and the recommendation of a particular disposition, the agreement shall be disclosed in open court at the time the plea is offered. Thereupon the judicial authority may accept or reject any agreement, or may defer the decision on acceptance or rejection of the agreement until it has had an opportunity to review the predispositional study.

Sec. 30a-3. —Standards of Proof; Burden of Going Forward

(a) The standard of proof for a delinquency conviction is evidence beyond a reasonable doubt and for a family with service needs adjudication is clear and convincing evidence.

(b) The burden of going forward with evidence shall rest with the juvenile prosecutor, or with the petitioner's counsel, as the case may be.]

COMMENTARY: Special Public Act 07-4 precludes any party other than the juvenile prosecutor from proceeding with the petition.

Sec. 30a-4. Plea Canvass

To assure that any plea or admission is voluntary and knowingly made, the judicial authority shall address the child or youth in age appropriate language to determine that the child or youth substantially understands:

(1) The nature of the charges;

- (2) The factual basis of the charges;
- (3) The possible penalty, including any extensions or modifications;
- (4) That the plea or admission must be voluntary and not the result of force, threats, or promises, apart from the plea agreement;
- (5) That the child or youth has (i) the right to deny responsibility or plead not guilty or to persist if that denial or plea has already been made, (ii) the right to be tried by a judicial authority and, (iii) that at trial the child or youth has the right to the assistance of counsel, the right to confront and cross-examine witnesses against him or her, and the right not to be compelled to incriminate himself or herself.

Sec. 30a-5. Dispositional Hearing

(a) The dispositional hearing may follow immediately upon a conviction or an adjudication.

(b) The judicial authority may admit into evidence any testimony which is considered relevant to the issue of the disposition, in any form the judicial authority finds of probative value, but no disposition shall be made by the judicial authority until the predispositional study, unless waived, has been submitted. A written predispositional study may be waived by the judicial authority for good cause shown upon the request of the parties, provided that the basis for the waiver and the probation officer's oral summary of any investigation are both placed on the record. The predispositional study shall

be presented to the judicial authority and copies thereof shall be provided to all counsel in sufficient time for them to prepare adequately for the dispositional hearing, and, in any event, no less than forty-eight hours prior to the date of the disposition.

(c) The prosecutor and the child or youth and parent or guardian shall have the right to produce witnesses on behalf of any dispositional plan they may wish to offer.

(d) Prior to any disposition, the child or youth shall be allowed a reasonable opportunity to make a personal statement to the judicial authority in mitigation of any disposition.

(e) The judicial authority shall determine an appropriate disposition upon conviction of a child as delinquent in accordance with General Statutes §§ 46b-140 and 46b-141.

(f) The judicial authority shall determine an appropriate disposition upon adjudication of a child from a family with service needs in accordance with General Statute § 46b-149(h).

(g) The judicial authority shall determine an appropriate disposition upon adjudication of a youth as a youth in crisis in accordance with General Statute § 46b-150f.

(h) The judicial authority shall determine the appropriate disposition upon a finding that a child adjudicated as a child from a family with service needs has violated a valid court order.

(i) The judicial authority shall determine the appropriate disposition upon a finding that a youth adjudicated as a youth in crisis has violated a valid court order.

(Adopted June 24, 2002, to take effect Jan. 1, 2003; amended June 26, 2006, to take effect Jan. 1, 2007.)

HISTORY—2007: In 2007, the last sentence of subsection (b) was added.

COMMENTARY—2007: The changes to the above rule and to Section 43-7 make uniform the timeframe for filing predispositional studies in juvenile matters and presentence investigations in criminal matters.

COMMENTARY: –See C.G.S. Secs. 46b-149f(c) and (h) as amended by Special Public Act 07-4, Sec. 32. General Statutes Sec. 46b-150f(c) allows the court to enforce its orders. If the court has the authority to enforce its orders, it logically follows that there is authority to petition the court for a violation of a court order.

Sec. 30a-6. — Statement on Behalf of Victim

Whenever a victim of an alleged delinquent act, the parent or guardian of such victim, a General Statutes § 54-221 advocate or such victim’s counsel exercises the right to appear before the judicial authority for the purpose of making a statement to the judicial authority concerning the disposition of the case, all parties, including the probation officer, shall be so notified. No statement shall be received unless the alleged delinquent has

signed a statement of responsibility, confirmed a plea agreement or been convicted as a delinquent.

(NEW) Sec. 30a-6A. –Persons in Attendance at Hearings

Any judge hearing a juvenile matter, may during such hearing, exclude from the courtroom in which such hearing is held any person whose presence is, in the court’s opinion, not necessary, except that in delinquency proceedings, any victim shall not be excluded unless, after hearing from the parties and the victim and for good cause shown, which shall be clearly and specifically stated on the record, the judge orders otherwise.

COMMENTARY: This new rule is proposed to address victims and the exclusion of unnecessary persons in the courtroom. The proposal is consistent with increased transparency in the superior court and patterns General Statutes § 46b-122.

Sec. 30a-7. Recording of Hearings

A verbatim stenographic or electronic recording shall be kept of any hearing, the transcript of which shall form part of the record of the case.

Sec. 30a-8. Records

(a) Except as otherwise provided by statute, all records maintained in juvenile matters brought before the judicial authority, either current or closed, including transcripts of hearings, shall be kept confidential.

(b) Except as otherwise provided by statute, no material contained in the court records, including the predispositional study, medical or clinical reports, school reports, police reports, or the reports of social agencies, may be copied or otherwise reproduced in written form in whole or in part by the parties or their counsel without the express consent of the judicial authority.

APPENDIX D

November 9th DRAFT

CHAPTER 31a DELINQUENCY, FAMILY WITH SERVICE NEEDS AND YOUTH IN CRISIS MOTIONS AND APPLICATIONS

Sec.

31a-1. Motions and Amendments

(NEW) Sec. 31a-1A. Continuances and Advancements

31a-2. Motion for Bill of Particulars

31a-3. Motion to Dismiss

31a-4. Motion to Suppress

31a-5. Motion for Judgment of Acquittal

31a-6. Motion for Transfer of Venue

31a-7. Motion in Limine

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31a-9. Severance of Offenses

31a-10. Trial Together on Petitions or Informations

31a-11. Motion for New Trial

31a-12. Motion to Transfer to Adult Criminal Docket

31a-13. Take into Custody Order

(NEW) Section 31a-13A. Temporary Custody Order – Family With Service Needs
Petition

31a-14. Physical and Mental Examinations

31a-15. Mentally Ill Children or Youth

31a-16. Discovery

31a-17. Disclosure of Defenses in Delinquency Proceedings

31a-18. Modification of Probation and Supervision

31a-19. Motion for Extension of Delinquency Commitment; Motion for Review of
Permanency Plan

(NEW) Sec. 31a-19A. Motion for Extension or Revocation of Family With Service
Needs Commitment; Motion for Review of Permanency Plan

(NEW) Sec. 31a-20. Petition for Violation of Family With Service Needs Post-
Adjudicatory Orders

Sec. 31a-1. Motions and Amendments

(a) A motion other than one made during a hearing shall be in writing and have annexed to it a proper order and, where appropriate, shall be in the form called for by Section 4-1. A motion shall state in paragraphs successively numbered the

specific grounds upon which it is made. A copy of the written motion shall be served on the opposing party or counsel pursuant to Sections 10-12 through 10-17.

(b) Motions shall be filed not later than ten days after the ~~[date the matter is scheduled for trial]~~ setting of the trial date except with the permission of the judicial authority. All motions shall be calendared to be heard by the judicial authority ~~[within]~~ not later than fifteen days after filing provided reasonable notice is given to parties in interest, or notices are waived. Any motion filed in a case on trial or assigned for trial may be disposed of by the judicial authority at its discretion or ordered ~~[upon the docket]~~ to be scheduled for hearing.

(c) If the moving party determines and reports that all counsel and pro se parties agree to the granting of a motion or the consideration of a motion without the need for oral argument or testimony, or the motion states on its face that there is such an agreement, the motion may be granted without a hearing.

(d) A petition or information may be amended at any time by the judicial authority on its own motion or in response to the motions of any party prior to any final adjudication. When an amendment has been so ordered, a continuance shall be granted whenever the judicial authority finds that the new allegations in the petition or charges in the information justify the need for additional time to permit the parties to respond adequately to the additional or changed facts and circumstances.

COMMENTARY: Paragraph (b) – In an old comment, Fran Carino noted that the current language is confusing and could mean that motions can be filed 10 days after the actual trial date. The change of “within” is standardization of terms. The language “upon the docket” is antiquated. Paragraph (d) – consistency and clarification.

(NEW) Sec. 31a-1A. Continuances and Advancements

(a) Motions for continuances or changes in scheduled court dates must be submitted in writing in compliance with Section 31a-1(a) and filed no later than seven days prior to the scheduled date. Such motions must state the precise reasons for the request, the name of the judicial authority scheduled to hear the case, and whether or not all other parties consent to the request. After consulting with the judicial authority, the clerk will handle bona fide emergency requests submitted less than seven days prior to scheduled court dates.

(b) Trials that are not completed within the allotted prescheduled time will be subject to continuation at the next available court date.

COMMENTARY: A rule that addresses continuances in the delinquency/FWSN/YIC section, similar to 34a-5, would be helpful.

Sec. 31a-2. Motion for Bill of Particulars

The child or youth may file a motion, or the judicial authority may order at any time, that the prosecuting authority file a bill of particulars. The judicial authority shall order that a bill of particulars disclose information sufficient to enable the child or youth to prepare the defense, including but not being limited to reasonable notice of the offense charged and the date, time and place of its commission. When any bill of particulars is ordered, an amended or substitute information, if necessary, shall be filed incorporating its provisions.

Sec. 31a-3. Motion to Dismiss

The child or youth may file a motion to dismiss if the motion is capable of determination without a trial of the general issue on grounds (1) to (9) of Section 41-8 of the rules of procedure in criminal matters, subject to the conditions of Section 41-10 and 41-11.

Sec. 31a-4. Motion to Suppress

The child or youth may file a motion to suppress potential testimony or other evidence if required under the constitution or laws of the United States or the state of Connecticut in accordance with the provisions of Sections 41-13 through 41-17 of the rules of procedure in criminal matters.

Sec. 31a-5. Motion for Judgment of Acquittal

(a) After the close of the juvenile prosecutor's case in chief, upon motion of the child or youth or upon its own motion, the judicial authority shall order the entry of a judgment of acquittal as to any principal offense charged and as to any lesser included offense for which the evidence would not reasonably permit an adjudication or finding of guilty. Such judgment of acquittal shall not apply to any lesser included offense for which the evidence would reasonably permit a finding of guilty.

(b) The judicial authority shall either grant or deny the motion before calling upon the child or youth to present the ~~[defendant's]~~ respondent's case in chief. If the motion is not granted, the ~~[defendant]~~ respondent may offer evidence without having reserved the right to do so.

COMMENTARY: Paragraph (b) – use of the term “respondents” in delinquency cases is appropriate, see Section 26-1(m).

Sec. 31a-6. Motion for Transfer of Venue

The child or youth or juvenile prosecutor may file a motion, or the judicial authority may order at any time, that a juvenile matter be transferred to a different venue in accordance with Sections 41-23 and 41-25 of the rules of procedure in criminal matters.

Sec. 31a-7. Motion in Limine

The judicial authority to whom a matter has been referred for trial may in its discretion entertain a motion in limine made by the child or youth or juvenile prosecutor regarding the admission or exclusion of anticipated evidence. Such motion shall be in writing and shall describe the anticipated evidence and the prejudice which may result therefrom. The judicial authority may grant the relief sought in the motion or such other relief as it may deem appropriate, may deny the motion with or without prejudice to its later renewal, or may reserve decision thereon until a later time in the proceeding.

Sec. 31a-8. Motion for Sequestration

A child or youth or juvenile prosecutor may file a motion for sequestration. The judicial authority upon such motion shall cause any witness to be sequestered during the hearing on any issue or motion or during any part of the trial in which such witness is not testifying.

Sec. 31a-9. Severance of Offenses

If it appears that a child or youth is prejudiced by a joinder of offenses, the judicial authority may, upon its own motion or the motion of the child or youth, order separate trials of the counts or provide whatever other relief justice may require.

Sec. 31a-10. Trial Together on Petitions or Informations

The judicial authority may, upon its own motion or the motion of the child or youth or juvenile prosecutor, order that two or more petitions or informations against the same child or youth be tried together. Petitions or informations against different children or youths may not be tried together unless all parties agree to waive the confidentiality rules.

Sec. 31a-11. Motion for New Trial

(a) Upon motion of the child or youth, the judicial authority may grant a new trial if it is required in the interest of justice in accordance with Section 42-53 of the rules of criminal procedure.

(b) Unless otherwise permitted by the judicial authority in the interests of justice, a motion for a new trial shall be made within five days after an adjudication or finding of guilty or within any further time the judicial authority allows during the five-day period.

(c) A request for a new trial on the ground of newly discovered evidence shall require a petition for a new trial and shall be brought in accordance with

General Statutes § 52-270. The judicial authority may grant the petition even though an appeal is pending.

Sec. 31a-12. Motion to Transfer to Adult Criminal Docket

The juvenile prosecutor may file a motion to transfer prosecution to the adult criminal docket in accordance with General Statutes § 46b-127.

Sec. 31a-13. Take into Custody Order

(a) Upon application in a delinquency proceeding, a take into custody order may be issued by the judicial authority:

(1) Upon a finding of probable cause to believe that the child is responsible for: (i) a delinquent act, including violation of court orders of probation [~~or supervision conditions~~] or the failure of the child charged with a delinquent act, duly notified, to attend a pretrial, probation or evaluation appointment, or (ii) for failure to comply with any duly warned condition of a suspended order of detention. The judicial authority also must find at the time it issues a take into custody order that a ground for detention pursuant to Section 30-6 exists before issuing the order.

(2) For failure to appear in court in response to a delinquency petition or summons served in hand or to a direct notice previously provided in court.

(b) Any application for a take into custody order must be supported by a sworn statement alleging facts to substantiate probable cause, and where applicable, a petition or information charging a delinquent act.

(c) Any child detained under a take into custody order is subject to Sections 30-1A through 30-11.

COMMENTARY: Paragraph (a) (1) – Special P.A. 05-250 (b), see also proposed new rule in Chapter 30; a child adjudicated as a FWSN cannot be the subject of a TIC any longer.

(NEW) Section 31a-13A. Temporary Custody Order – Family With Service Needs

Petition

If it appears from the allegations of a petition or other sworn affirmation that there is: (1) A strong probability that the child may do something that is injurious to himself or herself prior to court disposition; (2) a strong probability that the child will run away prior to the hearing; or (3) a need to hold the child for another jurisdiction, a judicial authority may vest temporary custody of such child in some suitable person or agency. A hearing on temporary custody shall be held not later than ten days after the date on which a judicial authority signs an order of temporary custody. Following such hearing, the judicial authority may order that the child’s temporary custody continue to be vested in some suitable person or agency.

COMMENTARY: See P.A. 07-4, Sec. 30(f).

Sec. 31a-14. Physical and Mental Examinations

(a) No physical and/or mental examination or examinations by any physician, psychologist, psychiatrist or social worker shall be ordered by the judicial authority of any child denying delinquent behavior or status as a child or youth from family with service needs or youth in crisis prior to the adjudication, except (1) with the agreement of the child’s or youth’s parent or guardian and attorney, (2) when the child or youth has executed a written statement of responsibility, (3) when the judicial authority finds that there is a question of the child’s or youth’s competence

to understand the nature of the proceedings or to participate in the defense, or a question of the child or youth having been mentally capable of unlawful intent at the time of the commission of the alleged act, or (4) where the child or youth has been detained and as an incident of detention is administered a physical examination to establish the existence of any contagious or infectious condition.

(b) Any information concerning a child or youth that is obtained during any mental health screening or assessment of such child or youth shall be used solely for planning and treatment purposes and shall otherwise be confidential and retained in the files of the entity performing such screening or assessment. Such information may be further disclosed only for the purposes of any court-ordered evaluation or treatment of the child or youth, or provision of services to the child or youth, or pursuant to General Statutes §§ 17a-101 to 17a-101e, inclusive, 17b-450, 17b-451 or 51-36a. Such information shall not be subject to subpoena or other court process for use in any other proceeding or for any other purpose.

~~(b)~~(c) Upon a showing that the mental health of a child or youth is at issue, either prior to adjudication for the reasons set forth in subsection (a) herein or subsequent thereto as a determinate of disposition, the judicial authority may order a child's or youth's [detention] placement for a period not to exceed thirty days in a hospital or other institution empowered by law to treat mentally ill children for study and a report on the child's or youth's mental condition.

COMMENTARY: Paragraph (a) –To clarify the process applies to youth in crisis. Paragraph (b) – See C.G.S. § 46b-124(j) which codified P.A. 05-152. Proposed additional language in (b) is derived from C.G.S. § 46b -124(k). That

statute was designed to address concerns raised by public defenders who had been refusing to allow their clients to be screened or assessed.

Sec. 31a-15. Mentally Ill Children

No child shall be committed by a judicial authority as mentally ill pursuant to General Statutes § 46b-140 until such a study has been made and a sworn report filed with the judicial authority or in lieu thereof without the sworn certificate of at least two impartial physicians, one of whom shall be a physician specializing in psychiatry, selected by the judicial authority who have personally examined the child within ten days of the hearing, stating that in their opinion the child's mental condition necessitates placement in a designated hospital for mental illness. If, after such hearing, the judicial authority finds by clear and convincing evidence that the child suffers from a mental disorder, as defined in General Statutes § 17a-75, is in need of hospitalization for treatment and such treatment is available as the least restrictive alternative, the judicial authority shall make an order for commitment for a definite period not to exceed six months to a designated hospital for mental illness of children. No child shall be committed as mentally deficient pursuant to General Statutes § 46b-140 except in accordance with procedures of General Statutes § 17a-274 (b), (g), and (h).

Sec. 31a-16. Discovery

(a) The child or youth or the juvenile prosecutor shall be permitted pretrial discovery in accordance with subsections (b), (c) and (d) of this section by interrogatory, production, inspection or deposition of a person in delinquency, family with service needs or youth in crisis matters if the information or material sought is

not otherwise obtainable and upon a finding that proceedings will not be unduly delayed.

(b) Motions or requests for discovery shall be filed with the court in accordance with Section 31a-1. The clerk shall calendar any such motion or request for a hearing. Objections to such motions or requests may be filed with the court and served in accordance with Sections 10-12 through 10-17 [~~within~~] not later than ten days of the filing of the motion or request unless the judicial authority, for good cause shown, allows a later filing. Upon its own motion or upon the request or motion of a party, the judicial authority may, after a hearing, order discovery. The judicial authority shall fix the times for filing and for responding to discovery motions and requests and, when appropriate, shall fix the hour, place, manner, terms and conditions of responses to the motions and requests, provided that the party seeking discovery shall be allowed a reasonable opportunity to obtain information needed for the preparation of the case.

(c) Motions or requests for discovery should not be filed unless the moving party has attempted unsuccessfully to obtain an agreement to disclose from the party or person from whom information is being sought.

(d) The provisions of Sections 40-2 through 40-6, inclusive, 40-7 (b), 40-8, through 40-16, inclusive, and 40-26 through 40-58, inclusive, of the rules of procedure in criminal matters shall be applied by the judicial authority in determining whether to grant, limit or set conditions on the requested discovery, issue any protective orders, or order appropriate sanctions for any clear misuse of discovery or arbitrary delay or refusal to comply with a discovery request.

COMMENTARY: Consistency and standardization of terms

Sec. 31a-17. Disclosure of Defenses in Delinquency Proceedings

The child in a delinquency case shall disclose defenses to the charged offenses in accordance with Section 40-17 through 40-25 of the rules of criminal procedure. Such disclosures shall be made ~~[within]~~ not later than ten days after the matter is scheduled for trial except with the permission of the judicial authority.

COMMENTARY: Consistency and standardization of terms

Sec. 31a-18. Modification of Probation and Supervision

At any time during the period of probation, supervision or suspended commitment, after hearing and for good cause shown, the judicial authority may modify or enlarge the conditions, whether originally imposed by the judicial authority under this section or otherwise. The judicial authority may extend the period of probation as deemed appropriate by the judicial authority. The judicial authority shall cause a copy of any such order to be delivered to the child or youth and to such child's or youth's parent, guardian or other person having control over such child or youth, and the child's or youth's probation officer.

~~[Any modification of the terms of probation or supervision, including discharge, shall be given in writing to] [t]The child, attorney, juvenile prosecutor [and] or parent [who] may, in the event of disagreement, in writing request the judicial authority ~~[within]~~ not later than five days of the receipt thereof for a hearing on the propriety of the modification. In the absence of any request, the modification of the terms of probation may be effected by the probation officer with the approval of the supervisor and the judicial authority.~~

COMMENTARY: Revisions are intended to reflect the statutory language set forth in C.G.S. § 46b-140a(a) and standardization of terms.

Sec. 31a-19. Motion for Extension of Delinquency Commitment; Motion for Review of Permanency Plan

(a) The commissioner of the department of children and families may file a motion for an extension of a delinquency commitment beyond the eighteen-month or four-year period on the grounds that such extension is for the best interests of the child or the community. The clerk [~~of the court~~] shall give notice to the [parent or guardian and to] the child, the child's parent or guardian, all counsel of record at the time of disposition and, if applicable, the guardian ad litem [~~at least~~] not later than fourteen days prior to the hearing upon such motion. The judicial authority may, after hearing and upon finding such extension is in the best interests of the child or the community, continue the commitment for an additional period of not more than eighteen months.

(b) Not later than twelve months after a child is committed as a delinquent to the commissioner of the department of children and families, the judicial authority shall hold a permanency hearing. Such a hearing will be held every twelve months thereafter if the child remains committed. Such hearing may include the submission of a motion to the judicial authority by the commissioner to either modify or extend the commitment.

(c) At least sixty days prior to each permanency hearing required under subsection (b) of this section, the commissioner of the department of children and families shall file a permanency plan with the judicial authority. At each permanency

hearing, the judicial authority shall review and approve a permanency plan that is in the best interests of the child and takes into consideration the child's need for permanency. The judicial authority shall also determine whether the commissioner of the department of children and families has made reasonable efforts to achieve the permanency plan.

COMMENTARY: Consistency and standardization terms.

(NEW) Sec. 31a-19A. Motion for Extension or Revocation of Family With Service Needs Commitment; Motion for Review of Permanency Plan

(a) The commissioner of the department of children and families may file a motion for an extension of a commitment of a child who has been adjudicated as a child from a family with service needs on the grounds that an extension would be in the best interests of the child. The clerk shall give notice to the child, the child's parent or guardian, all counsel of record at the time of disposition and, if applicable, the guardian ad litem not later than fourteen days prior to the hearing upon such motion. The judicial authority may, after hearing and upon finding that such extension is in the best interests of the child and that there is no suitable less restrictive alternative, continue the commitment for an additional indefinite period of not more than eighteen months.

(b) The commissioner of the department of children and families may at any time file a motion to revoke a commitment of a child who has been adjudicated as a child from a family with service needs, or the parent or guardian of such child, may at any time but not more often than once every six months file a motion with the judicial authority which committed the child to revoke such commitment. The clerk

shall notify the child, the child's parent or guardian, all counsel of record at the time of disposition, if applicable, the guardian ad litem, and the commissioner of the department of children and families of any motion filed to revoke a commitment under this subsection, and of the time when a hearing on such motion will be held.

(c) Not later than twelve months after the commitment of a child who has been adjudicated as a child from a family with service needs to the commissioner of the department of children and families, the judicial authority shall hold a permanency hearing. Such a hearing will be held every twelve months thereafter if the child remains committed. Such a hearing also may include the submission of a motion to the judicial authority by the commissioner of the department of children and families, the child's parent or guardian to either extend or revoke the commitment.

(d) At least sixty days prior to each permanency hearing required under subsection (c) of this section, the commissioner of the department of children and families shall file a permanency plan with the judicial authority. At each permanency hearing, the judicial authority shall review and approve a permanency plan that is in the best interests of the child and takes into consideration the child's need for permanency. That judicial authority shall also determine whether the commissioner of the department of children and families has made reasonable efforts to achieve the permanency plan.

COMMENTARY: P.A. 07-4, Section 30(i). ASFA requires FWSN permanency plans. We hope to propose a legislative change to "motion" for consistency with both child protection and delinquency extensions of commitment. Since statutorily and by rules there has been a gradual shift away from petitions to motions in

addressing post disposition matters it is recommended that the rule reflect this shift in practice.

(NEW) Sec. 31a-20. Petition for Violation of Family With Service Needs Post-Adjudicatory Orders

(a) When a child who has been adjudicated as a child from a family with service needs violates any valid order which regulates future conduct of the child made by the judicial authority following such an adjudication, a probation officer, on receipt of a complaint setting forth the facts alleged to be a violation, or on the probation officer's own motion on the basis of his or her knowledge of such a violation, may file a petition with the court alleging that the child has violated a valid court order and setting forth the facts claimed to constitute such a violation.

(b) The judicial authority will ensure that the child is provided an evidentiary hearing on the allegations contained in the petition and that counsel is assigned for the child or youth pursuant to Section 30a-1 of these rules or that counsel of record is notified of the evidentiary hearing.

(c) Upon a finding by the judicial authority by clear and convincing evidence that the child has violated a valid court order, the judicial authority may (1) order the child to remain in such child's home or in the custody of a relative or any other suitable person, subject to the supervision of a probation officer, (2) upon a finding that there is no less restrictive alternative appropriate to the needs of the child and the community, enter an order that directs or authorizes a peace officer or other appropriate person to place the child in a staff-secure facility under the auspices of the Court Support Services Division of the Judicial Branch for a period not to

exceed forty-five days, with review by the judicial authority every fifteen days to consider whether continued placement is appropriate, at the end of which period the child shall be returned to the community and may be subject to the supervision of probation officer, or (3) order that the child be committed to the care and custody of the commissioner of the department of children and families for a period not to exceed eighteen months and that the child cooperate in such care and custody.

COMMENTARY: See P.A. 07-4, Section 32. (a)